

State Of Karnataka Vs. Girish

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Court : Karnataka

Decided On : Jun-01-2022

Judge : K.Somashekar and Shivashankar Amarannavar

Appeal No. : CRL.A 117/2016

Appellant : State Of Karnataka

Respondent : Girish

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE1T DAY OF JUNE, 2022 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR CRIMINAL APPEAL No.117/2016 BETWEEN: State of Karnataka By Dabaspeth Police Station. Appellant (By Smt.Rashmi Jadhav, HCGP) AND: Girish S/o Honnaiah Aged of 28 years r/at Sidda Begur Hebbur Hobli Tumakuru Taluk and District - 572 101. Respondent (By Sri A.N Radha Krishna, Advocate) --- This Criminal Appeal is filed under Section 378(1) and (3) Cr.P.C praying to grant leave to appeal against the judgment and order dated 5.8.2015 passed by the 2 VII-Additional District and S.J., Bengaluru rural District, Bengaluru in S.C.No.185/2011, acquitting the respondent- accused of the offence punishable under Sections 302 and 201 of IPC and etc., This Appeal coming on for Hearing this day K.Somashekar J, Delivered the following;

JUDGMENT

The State has preferred this appeal challenging the impugned judgment rendered by the Trial Court in S.C.No.185/2011 dated 05.08.2015 acquitting the appellant / accused for offences punishable under Sections 302 and 201 of IPC, 1860. This appeal is filed seeking to consider the grounds urged therein and to set aside the judgment of acquittal rendered by the Trial Court for the aforesaid offences and thereby to convict the accused for the offences punishable under Sections 302 and 201 of IPC, 1860.

2. Heard the learned HCGP Smt. Rashmi Jadhav for the State and learned counsel Sri. A.N. Radhakrishna 3 for the respondent/accused. Perused the judgment of acquittal in S.C.No.185/2011.

3. Factual matrix of the appeal is as under: It transpires from the case of the prosecution that on 03.12.2010 the complainant Gangadharaiah who is none other than the father of the deceased Bhagyamma had lodged a complaint before the Dabaspeth Police Station stating that his daughter Bhagyamma and the accused Girish were in love since two years. The accused had also promised to marry her and with her permission both accused and the deceased had a physical relationship from the past one year. Consequent to the physical relationship between the deceased Bhagyamma and the accused Girish, the deceased Bhagyamma became pregnant and she was 9 months pregnant. By intervention of the elderly persons such as CW.2 to 7, the deceased Bhagyamma and the accused Girish got married at Daninamma temple in the presence of the villagers. After 3 days of the marriage, the 4 deceased Bhagyamma delivered a baby girl and they named her Shruthi. In pursuance of the murder of the deceased Bhagyamma and also her daughter Shruthi aged of 3 months, the Complainant Gangadharaiah had initiated criminal prosecution against the accused Girish by filing a complaint as per Ex.P13. The complaint was received by PW.22 K. Suresh who is a Police Sub Inspector who was subjected to examination and recorded an FIR as per Ex.P15. Subsequent to recording of FIR, the case was taken up for investigation by the Investigating Officer namely PW.21, who after completion of investigation thoroughly, recorded the statement of witnesses and also drew a mahazar as per Ex.P14 in the presence of panch witnesses and also secured the post mortem report as per Ex.P16 and such other material documents and laid a

charge sheet against the accused before the Committal Court. Subsequently, the Committal Court had passed an order dated 27.05.2011 by committing the case to the Sessions Court for trial whereby the case was registered in 5 S.C.No.185/2011. Subsequently the accused was secured to face trial by issuance of summons/process. The accused had engaged a counsel for his defence.

4. Subsequently the Trial Court on hearing the arguments advanced by the learned Public Prosecutor and the defence counsel, framed charges against the accused for the offences under Sections 302 and 201 of IPC, 1860. However, the accused did not plead guilty but claimed to be tried. Accordingly, plea of the accused was recorded separately.

5. Subsequent to framing of charge against the accused, the prosecution had subjected to examination in all PW.1 to PW.22 and got marked several documents at Ex.P1 to Ex.P17 but no material objects were got marked. Subsequent to closure of the evidence on the part of the prosecution, incriminating statement as contemplated under Section 313 of Cr.P.C. was recorded. Subsequently, accused were called upon to adduce defence evidence as 6 contemplated under Section 233 Cr.P.C. But the accused did not come forward to adduce any defence evidence on their side.

6. Subsequent to closure of the evidence on the part of the prosecution as well as the defence side, the trial Court heard the arguments advanced by the learned Public Prosecutor and also the arguments of the learned defence counsel. On perusal of the entire evidence on record, the Trial Court rendered an acquittal judgment acquitting the appellant / accused for the alleged offences, as stated above.

7. PW.13 Gangadharaiah had initiated the criminal prosecution against the accused by lodging a complaint at Ex.P13 and based upon his complaint, criminal law was set into motion by registering FIR which is at Ex.P15.

8. PW.19- Anil Kumar who is the Taluk Executive Magistrate has conducted inquest on the dead body of the deceased Bhagyamma. The baby girl by name Shruthi 7 aged of 3 months was pushed by the accused Girish but the dead body

of baby girl was not traced by the investigating agency during the course of the investigation. But after conducting inquest on the dead body of deceased Bhagyamma, PW.19 Anil Kumar namely Taluk Executive Magistrate issued inquest report as per Ex.P8.

9. The Trial Court has appreciated the evidence of PW.10 Narasamma, PW.13 Gangadharaiah and PW.14 Doddamma. PW.13 and P.14 are the parents of the deceased Bhagyamma and PW.15 and PW.16 are the brothers of the deceased Bhagyamma. PW.10 Narasamma is a distant relative of the deceased Bhagyamma. These are the evidences which have been appreciated by the Trial Court including the evidence of PW.19 Anil Kumar in respect of contents of inquest report at Ex.P8 and so also the evidence of PW.21 who is the Investigating Officer and whereby thorough investigation has been done and laid the charge sheet against the accused. 8

10. PW.20 Dr. Kiran Rathnakar was the Doctor who conducted autopsy of the dead body and issued the post mortem report as per Ex.P16 and also stated the cause of death of deceased Bhagyamma. For having sustained injuries over her body, it is alleged that the deceased Bhagyamma and also her 3 months old baby namely Shruthi was pushed from the top of Shivaganga Hills in the limits of Dabaspeth Police Station. Even though evidence and materials were facilitated by the prosecution, it appears to be full of contradictions and also improvement in the evidence of prosecution and also statement given by the witnesses before the investigating agency and no specific circumstance has been established by the prosecution in respect of committing murder of the deceased Bhagyamma by the accused Girish. The circumstance that merely the dead body of the deceased Bhagyamma has been found in Shivaganga hills, it can be presumed that the accused Girish has pushed deceased Bhagyamma along with their baby girl by name Shruthi 9 aged of 3 months from Shivaganga hills and committed their murder. The prosecution has subjected to examination of the aforesaid witnesses, but no evidence is forthcoming to establish that the accused Girish has committed murder of his wife Bhagyamma and also their daughter namely Shruthi aged of 3 months. Whereas there is also no direct evidence attributed against the accused stating that the accused has committed the murder of his wife Bhagyamma and

also their child namely Shruthi aged of 3 months. Upon this evidence, the Trial Court has arrived in conclusion that the prosecution has failed to prove the guilt of the accused Girish beyond all reasonable doubt and consequently has rendered an acquittal judgment for the offence under Section 302 and 201 of IPC, 1860. It is this judgment which is challenged in this appeal by urging various grounds.

11. The learned HCGP for State namely Smt. Rashmi Jadhav has taken us through the evidence of 10 PW.1, PW.5 and so also the evidences of PWs.6, 7 and 8 who are the material witnesses in respect of the allegation made against the accused Girish that he had committed the murder of his wife deceased Bhgayamma and also their daughter by name Shruthi aged of 3 months. Though the said Girish had pushed Bhagyamma and the child Shruthi from Shivaganga hills and committed their murder, the Trial Court has rendered an acquittal judgment which is contrary to law, facts and circumstances of the case narrated in this appeal. On this premise, learned HCGP prays to allow this appeal since the same requires intervention and consequently to set aside the judgment and order dated 05.08.2015 passed by the VIII Additional District and Sessions Judge, Bengaluru in S.C.No.185/2011.

12. PW.1 to PW.5 who are the material witnesses and also being the neighbours of deceased Bhagyamma and the accused Girish, they are the material witnesses to 11 the case of the prosecution but the Trial Court has failed to appreciate their evidence coupled with the evidence of PWs.6, 7 and 8 being the witnesses in respect of the marriage of the deceased Bhgayamma with the accused Girish. The accused Girish was said to be a student studying technical course which is evident from the evidence of PW.15 Shivakumar who is none other than the brother of the deceased Bhgyamma. Further, his evidence also reveals that love affair developed in between the deceased Bhgyamma and the accused Girish, and that the same has later turned to physical contact in between them and that she became pregnant woman. Her pregnancy had come to the knowledge of her parents who were examined as PW.13 and PW.14, who after the intervention of elderly persons by conducting a panchayat, had performed the marriage of Bhagyamma with accused Girish in temple. But the said marriage was conducted when the said Bhagyamma was a carrying woman of 9 months. Hence, within a

span of three days of her 12 marriage with Girish, she gave birth to a female child who was named Shruthi. PW.13 and PW.14 are the material witnesses and they are the parents of the deceased Bhagyamma and also the prosecution has established in their evidence relating to the last seen of deceased Bhagyamma with a company of the accused Girish. Even on close scrutiny of their evidence and also on appreciating all evidence coupled with evidence of PW.15 and 16, the Trial Court has failed to appreciate the entire evidence in a proper perspective manner and consequently rendered an acquittal judgment. Therefore, in this appeal, it requires for re-appreciation of the evidence of PW.14 Doddamma being the mother of the deceased Bhagyamma and also the evidence of PW.15 and PW.16 being the brothers of deceased Bhagyamma. Their evidence on the part of prosecution corroborates in respect of the accused Girish committing murder of his wife and their female child aged of 3 months as narrated in the prosecution case.

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13. The second limb of the argument has been advanced by the learned HCGP for State by referring to the evidence of PW.10 Narasamma who is a distant relative and an immediate neighbour of the deceased Bhagyamma who has met the deceased Bhagyamma as on the date of incident whereby the accused Girish is alleged to have taken his wife Bhagyamma along with 3 months baby girl as on the date of incident and she advised the accused to take care of his wife Bhagyamma and his child aged of 3 months as on the date of the incident. The evidence of PW.10 even though a circumstantial evidence but the Trial Court has failed to appreciate her evidence also. The entire case has been rested upon the evidence of PW.13 and 14 who are the parents and also in respect of last seen of deceased Bhagyamma in the company of her husband i.e. accused Girish. But the Trial Court has failed to appreciate the evidence in discharging the burden in respect of sufficient circumstantial evidence even though which has been laid by the prosecution for having 14 subjected to the aforesaid evidence to prove the guilt of the accused Girish. But the Court has to consider the total criminality effect of the proof of evidence of each one of the witnesses and then come to a conclusion. Acknowledgment of the guilt of the accused and any binding effect of this fact is taken together in conclusion in establishing the guilt against the accused Girish who has committed the murder of his wife Bhagyamma and also their daughter

aged of 3 months. But the Trial Court failed to consider the evidence of the witnesses examined and thereby has rendered an acquittal judgment for the offences under Section 302 and 201 of IPC, 1860. Hence, in the instant case it requires for re-appreciation of the evidence and also revisiting the impugned acquittal judgment rendered by the Trial Court in S.C.No.185/2011. Lastly, the learned HCGP for State has taken us to scope of Section 106 of Evidence Act, 1872 wherein the accused being the husband of deceased Bhagyamma and father of the minor kid namely Shruthi aged of 3 months and it is 15 the responsibility vested with him and also he is duty bound to explain the cause of death of the victim namely Bhagyamma who is none other his wife and Shruthi, his baby girl aged of 3 months.

14. The case has to be dealt with keeping in view of the scope of Section 106 of Evidence Act, 1872 as he being the accused arraigned in the case of the murder of his wife deceased Bhagyamma along with thier kid namely Shruthi aged of 3 months. It was an offence and also murder of his wife deceased Bhgyamma and also their kid namely Shruthi aged of 3 months was well within his knowledge and he is duty bound to discharge his burden but he has not discharged his burden by dispelling the doubts regarding the death of his wife deceased Bhgyamma and also his child namely Shruthi aged of 3 months. But the Trial Court has failed to consider the aforesaid aspect keeping in view Section 106 of Indian Evidence Act, 1872 and even the legal presumption with regard to the married 16 woman as per Section 113A of the Indian Evidence Act inclusive of Section 114 of the aforesaid Indian Evidence Act, 1872. These are the contentions of the learned HCGP for State in order to convict the accused for committing the murder. Even though incriminating statement has been recorded as contemplated under Section 313 of Cr.P.C even equating the incriminating evidence found against the accused Girish and also recording his answer while he was examined in respect of incriminating statement as contemplated under aforesaid principle of Code of Criminal Procedure, the accused has not given a proper explanation. That itself clearly indicates that the accused Girish has committed the murder of his wife along with their kid namely Shruthi aged of 3 months.

15. Viewed from all these angle, the learned HCGP submits that the acquittal judgment rendered by the Trial Court is perverse and there is no justifiable reason or even good reason to have acquitted the accused and the Trial 17 Court has erroneously come to the conclusion without appreciating the evidence of PWs.13,14,15 and 16 inclusive of the evidence of PW.21. Therefore, in this appeal it requires for intervention of the impugned judgment of acquittal rendered by the Trial Court and consequently to convict the accused for the alleged offences. If not, it would result in a miscarriage of justice. On this premise, the learned HCGP for State in this appeal seeks to consider the grounds as urged in this appeal and to set aside the judgment of acquittal rendered by the Trial Court and to convict the accused Girish for the offence punishable under Sections 302 and 201 of IPC, 1860.

16. Per contra, the learned counsel for the respondent/accused namely Sri. A.N. Radhakrishna has taken us through the entire evidence and contends that the entire case is revolving around circumstantial evidence and that the prosecution has to prove the chain of link in the circumstances with adequate evidence. But in the 18 instant case, the prosecution has failed to establish the guilt against the accused Girish. But the prosecution has examined PW.1 to PW.11 who are the neighbours of the deceased Bhagyamma and so also the accused Girish. But they have stated specifically in their evidence that they knew the accused Girish and they are the residents of Siddabegur village and they also knew the deceased Bhagyamma and also PW.13 Gangadharaiah and PW.14 Doddamma who are parents of deceased Bhagyamma and also their grandchild namely Shruthi who was aged of 3 months as on the date of incident.

17. But the aforesaid witnesses have specifically stated in their evidence that the accused Girish and the deceased Bhagyamma fell in love with each other which ultimately turned into physical contact, whereafter she became pregnant and delivered a baby girl who was aged of 3 months at the time of the incident. She had delivered the baby soon after her marriage, i.e. within a period of 3 19 days from the date of her marriage. At the time of their marriage itself, the deceased Bhagyamma had almost completed 9 months of her pregnancy. It was a known fact to each one of the witnesses i.e. PW.1 to PW.11 and everyone in the village

knew that the deceased Bhagyamma was pregnant before her marriage due to some physical contact in between her and the accused Girish. In the panchayath which was convened in their village to conduct the marriage of Girish with Bhagyamma, PW.6 Abdul Munaff and PW.9 Puttaiah and other elderly persons are said to have been participated in the said panchayath. Both the deceased Bhagyamma and the accused Girish were also present in the panchayath. On questioning both the deceased Bhagyamma and the accused Girish, they are said to have admitted in panchayath that she was a carrying woman and they both loved each other and deceased Bhagyamma, at the instance of the accused Girish, had become pregnant. In view of this admitted fact, the panchayatdars being the 20 elderly persons who were present in the panchayath had advised them to get married. On the very same day, the marriage of the deceased Bhagyamma and accused Girish was performed in the presence of elderly persons who are said to be panchayatdars and as well as in the presence of parents of the bride and bridegroom in Daninamma temple. There was some exchange of Thali to her neck by the accused Girish. Their marriage was performed as per the customs prevailing in their society. The said marriage function was also subjected to photos at Ex.P10, 11 and 12. Further, they came to know that deceased Bhagyamma has given birth to a child namely Shruthi aged of 3 months. They further came to know that Bhagyamma fell from Shivaganga hills and succumbed to death. These are the evidence facilitated and also elicited by the prosecution, in cross examination and even examination in chief of PW.13 and 14 who are the parents of the deceased Bhagyamma and the grand parents of the baby girl namely 21 Shruthi. PW.1 to PW.11 were subjected to examination in addition to other witnesses.

18. Even the hostile witness being thoroughly examined by the prosecution, nothing worthwhile has been elicited to prove the incident narrated in their complaint relating to the accused Girish having committed murder of the deceased Bhagyamma by pushing her to Shantala drop of Shivaganga hills. Though the aforesaid witnesses have been subjected to examination and got marked Ex.P1, P2, P3, P4, P5, P6 and P7 through the evidence of PW.1 to PW.5 and PW.7 and PW.9, but their evidence is contrary to the evidence of PW.13 and PW.14 who were the parents of deceased Bhagyamma. PW.10 Narasamma who is the

neighbour and more so a distant relative of both the deceased Bhagyamma and the accused Girish was also examined. But her evidence runs contrary to the evidence of PW.13 and PW.14 inclusive of the evidence PW.15 and 16 and further contradictory to the evidence of PW.19 Anil Kumar who is the Taluk Executive Magistrate who 22 conducted inquest over the dead body of the deceased Bhagyamma and issued the inquest report at Ex.P8. During inquest, the statements of PW.13 and PW.14 being the parents along with relatives of the deceased Bhagyamma were recorded. But nothing worthwhile has been elicited by the prosecution though PW.13 and PW.14 made some categorical admission that elders of the family of Girish who were present in the panchayath did not agree to the marriage of Girish with Bhagyamma. The accused Girish himself was responsible for the pregnancy of their daughter due to love affair between them. The evidence of PW.13 and PW.14 being the parents of the deceased Bhagyamma, are the material witnesses in the case. In their evidence nowhere they have stated that on the date of incident, the accused had come to their house and took their daughter Bhagyamma along with her kid who was aged of 3 months. But it is an admitted fact that the accused was studying an Engineering course at Sridevi Engineering College, Tumkur and also the brother of the 23 deceased namely Shivakumar who is examined as PW.15 was also studying in the said college and he being the hostel student in the Government hostel and the brother of the deceased Bhagyamma. One Manjunatha who is examined as PW.16 was doing hotel work at Tumkur. It is an admitted fact which is also revealed from the evidence of PW.14, PW.15 and PW.16, that the accused Girish used to come to their village at the time of festivals and holidays but it is not the case of the prosecution that on the date of incident there was any festival or it was any holiday. But both PW.13 and PW.14 have made categorical admission that the elders of the family of accused Girish did not give consent to the said marriage of the accused Girish with the deceased Bhagyamma. Hence, there are clouds of doubt in the evidence of witnesses who have been subjected to examination to prove the guilt of the accused Girish and also the accused is the cause for deceased Bhagyamma to become pregnant who delivered a baby girl namely Shruthi. But PW.13 Gangadharaiah who is the author of 24 the complaint at Ex.P13 was subjected to cross examination whereby it reveals that in their village

people were talking about the pregnancy of Bhagyamma prior to her marriage and delivery of a female child within a period of three days after her marriage. According to the prosecution, accused Girish and also deceased Bhagyamma were questioned by PW.14 namely Doddamma who is her mother. Hence it was revealed that Bhagyamma had become pregnant due to some physical contact with the accused Girish and the said news was spreading in the village. Since the message had spread in the village and after hearing the villagers talking about deceased Bhagyamma, she became very depressed. Because of that she had undergone depression and committed suicide by falling from Shivagange hills as contended.

19. But PW.13 who is none other than the author of the complaint at Ex.P13 and also admitted in his 25 evidence that his sons and the accused Girish were friends to each other but in cross examination he has stated that the accused Girish did not want a female child and suggested the deceased Bhagyamma to give the said baby to the church. PW.14 in her evidence has stated that as on the date of incident, the deceased Bhagyamma and the accused Girish had not returned in the evening but for searching them and also questioned with one of the shopkeeper nearby the temple in shivagange hill and shop keeper told her that her daughter has taken eatables and went upstairs but that he has not seen her returning. In spite of search, they could not find the deceased Bhagyamma and also her kid namely Shruthi who is aged of 3 months. On a close scrutiny of the evidence of PW.13 and PW.14 coupled with the evidence of PW.15 and 16, it is seen that the accused Girish had taken the deceased Bhagyamma and her kid namely Shruthi to the Shivagange hills for the Shantala drop and it was shown to the police and others. It was the place where Bhagyamma and her 26 child were pushed by the accused Girish. The mahazar was drawn by the investigating agency in the presence of PW.15 who has subscribed his signature. But he has denied that at the time of studying they were residing in hostel. But PW.13 and PW.14 have specifically stated in their evidence during the time of festival and not even during holidays, they come to their houses. But PW.16 also stated in his evidence that the accused Girish and the deceased Bhagyamma loved each other and after coming to know about their love affair, panchayat was held and their marriage was performed as per the customs prevailing in their society. PW.13

Gangadharaiah had filed a complaint before the Dabaspeta Police Station and based upon the complaint criminal law was set into motion and the police apprehended the accused and whereby the accused showed the place Shantala drop where he had pushed deceased Bhagyamma along with her kid namely Shruthi. PW.17 Narayan Rao.K who is a Police Constable i.e. P.C.No.1493 has stated in his evidence that on 27 06.12.2010, he apprehended the appellant/accused Girish near Bhatawade at Tumkur and took him from there and produced him before the Sub Inspector of Police.

20. PW.18 C.H. Jayaprakash who is also a Police Constable and whereby the case No.226/2010 has been registered and leaving FIR to the jurisdictional Court. PW.19 Anil Kumar who is Taluk Magistrate has conducted inquest over the dead body of the deceased Bhagyamma on 04.12.2010 and during that inquest held over the dead body, he has recorded the statement of Doddamma being mother of the deceased and PW.15 and PW.16 being the brothers of deceased. But PW.18 in the cross examination has stated that he did not see PW.10 at the time of her statement made before him as regards the love affair of the deceased Bhagyamma with the accused Girish. But he has stated that PW.16 Manjunath who is none other than brother of the deceased Bhagyamma even though he has been subjected to examination but he did not specifically state that all of his family members had made search of deceased Bhagyamma in Shivaganga hills. But he has clearly stated that nobody has stated that they have seen the incident. The material witnesses of PW.13, 14, 15 and 16 even though the entire case is rested upon the evidence of these witnesses and even though the last seen theory is alleged to have been put forth by prosecution but there is no piece of evidence that as on the date of incident, the accused was last seen with the deceased as put forth by prosecution. Nobody has seen the accused Girish and the deceased Bhagyamma together as on the date of the incident. PW.21 who has been subjected to cross examination has stated the accused Girish showed the investigating agency the place where the deceased Bhagyamma and her kid namely Shruthi who is aged of 3 months alleged to have been pushed in the Shantala drop in Shivagange hills. PW.21 has further stated in his evidence that the accused Girish has been apprehended in 29 Tumkur. At the time of apprehending and also at the time of evidence it has been admitted that the

accused Girish was studying B.E. course in Sridevi Engineering College at Tumkur and has clearly stated that he has not made any enquiry as on the date of incident or even prior to the incident or even after the incident as regards the specific allegation against the accused Girish at Ex.P14. Merely because of some allegation made against the accused Girish by launching criminal prosecution in respect of the complaint at Ex.P13 by PW.13, it cannot be believed to be gospel truth. The evidence of PW.13 and PW.14 coupled with the evidence of PW.15 and PW.16 are found to be clouds of doubt and further contradictory to the evidence of PW.20 being Medical Officer who conducted autopsy and issued post mortem report at Ex.P16 and he has opined that the death of deceased Bhagyamma was due to sustained injuries, shock and also bleeding. Injuries have been noted by PW.20 who conducted autopsy and opined that death of deceased Bhagyamma was due to many 30 injuries. Unless the post mortem report at Ex.P16 is corroborated with any other evidence it cannot be said that the prosecution has proved the guilt against the accused Girish beyond all reasonable doubt.

21. Lastly, the learned counsel for the respondent/accused contends that there is no iota of evidence adduced by the prosecution before the Trial Court to show that as on the date of incident, the accused Girish was last seen with the deceased Bhagyamma and even there is no direct evidence attributed against the accused Girish to show that accused Girish had pushed his wife deceased Bhagyamma along with his kid namely Shruthi from Shantala drop in Shivaganga hills. Even though PW.21 has been subjected to thorough examination, nothing worthwhile has been elicited to prove that the accused Girish has caused the death of the deceased Bhagyamma or otherwise, had committed the murder of 31 the deceased Bhagyamma along with her 3 month old child Shruthi.

22. The prosecution has miserably failed to prove the guilt of the accused by placing worthwhile evidence. Hence, in this appeal it does not require interference with the judgment of acquittal rendered by the Trial Court, since there is no perversity in the said judgment.

23. In support of his contentions, learned counsel for the respondent has relied on the following decisions: i) State of Punjab Vs. Ajaib Singh and Others (2005 SCC

(Crime)

43) ii) Kanhaiya Lal Vs. State of Rajasthan (2014 Crime L.J1950 iii) Samghaji Hariba Patil Vs. State of Karnataka (2007(1) SCC (Crime)

113) In the judgment of the Apex Court in the case of State of Punjab Vs. Ajaib Singh and Others (2005 SCC32(Crime) 43), the scope and object of Sections 302, 148 and 34 of IPC, 1860 and issues in respect of appeal against acquittal has been extensively addressed. On re- appreciation of evidence, it has been held that testimony of the alleged eyewitnesses are not truthful and reliable - Having carefully re-appreciated the evidence on record, it is held that the view taken by High Court on meticulous examination of evidence was a reasonable view and fully supported by evidence and hence does not deserve to be interfered with in an appeal against acquittal.

24. Further, in the case of Kanhaiya Lal Vs. State of Rajasthan referred to supra, the Honble Supreme Court has addressed the scope and object of Sections 300 and 201 of IPC in respect of murder and causing disappearance of evidence and so also circumstantial evidence - allegations that appellant / accused committed the murder of the deceased by strangulation and threw body in the well - Motive alleged that deceased as elder of 33 family dissuaded accused to sever his illicit relationship with his sister-in-law and triggered murder. But in this judgment the theory of the last seen together is the singular piece of circumstantial evidence available against accused - Hence it is held in the said judgment that accused cannot be convicted merely on suspicion, however strong it may be, or on his conduct.

25. Further, in the case of Samghaji Hariba Patil Vs. State of Karnataka, the Honble Supreme Court has discussed relating to the scope of Sections 302, 307 and 34 of IPC, 1860. Appreciation of evidence - Prosecutions failure to prove its case - According to prosecution, pursuant to quarrel ensued over ploughing of land alleged to be of deceased by accused No.1, appellant who was a friend of Accused No.1, assaulted deceased with a hammer causing his death and other accused assaulted deceaseds family members with bamboo sticks causing injuries - Whether the land belonged to deceased in dispute - Motive 34 of

appellant not acquitting the appellant - Held, High Court erred in reversing the judgment of acquittal. In so far as Sections 378 and 386 - Appeal before High Court against acquittal recorded by trial Court - High court should not ordinarily reverse the judgment of acquittal when two views are possible - When trial Courts judgment cannot be said to be perverse or not possible to be taken, held on facts, High Court erred in reversing trial courts judgment and convicting the accused.

26. These reliances have been facilitated by the learned counsel for the respondent / accused in support of the acquittal judgment rendered by the trial Court. The Trial Court has rightly acquitted the accused as the evidence put forth by the prosecution was full of contradictions and improvements and no single circumstance has been shown by the prosecution to prove that accused Girish had committed the murder of the deceased - Bhagyamma. Hence, there is no perversity in the judgment of acquittal rendered by the trial Court. Therefore, it does not arise to call for any interference since there are no circumstances warranting to call for interference. The prosecution having failed to prove the guilt of the accused beyond all reasonable doubt, the trial Court has rightly come to the conclusion by rendering an acquittal judgment. Therefore, viewed from any angle, he submits that the contentions made by the learned HCGP for the State do not have any substance for interference. Consequently, learned counsel for the respondent seeks for dismissal of this appeal as being devoid of merits.

27. Keeping in view the contentions made by learned HCGP for the appellant / State and so also the counter contentions urged by the learned counsel for the respondent / accused, it is seen that there is no dispute that the deceased - Bhagyamma and accused - Girish fell in love with each other, whereby he had promised to marry her. In view of the said love affair, physical contact developed between them and due to that physical contact, she became pregnant and delivered a baby girl immediately after 3 days from the date of her marriage with accused. The said marriage was performed in Daninamma temple as per the customs prevailing in their society in the presence of elders. At the time of her marriage with the accused - Girish, she was almost 9 months pregnant woman and it was well within the knowledge of her parents who have been examined as PWs.13 and 14. Then a panchayath was constituted by CW.2 and 7 who are cited

as witnesses in the charge sheet and in the month of August 2008, marriage of Bhagyamma was performed with accused - Girish in Daninamma temple. But three days after her marriage with him, she delivered a baby girl who was named Shruthi. But allegation is made in the theory of the prosecution that the accused pushed his wife Bhagyamma along with their kid - Shruthi who was aged of 3 months from Shantala Drop in Shivagange Hills. 37

28. The entire case of the prosecution revolves around the evidence of PWs.13 and 14 who are parents of the deceased - Bhagyamma and PWs.15 and 16 who are brothers of the deceased. But the entire case is depending upon circumstantial evidence. The circumstances required to prove by the prosecution are firstly, the accused and deceased were loving each other. Secondly, the deceased became pregnant by the accused. Thirdly, accused had taken Bhagyamma and their child Shruthi to Shivagange hills with an intention to eliminate her along with the kid. Fourthly, accused had pushed Bhagyamma and their kid Shruthi from Shanthala drop in Shivagange hills. Fifthly, accused had given voluntary statement and also he had shown the place of incident where he dropped his wife along with the kid - Shruthi. In respect of these points which arise for consideration, the answer to these questions entirely depends upon circumstantial evidence. In the reliance of 2014 (4) Kar.L.J259(SC) Prakash Vs. State of Karnataka, the Honble Supreme Court has 38 addressed the issue in respect of the provision of Section 3 of Indian Evidence Act, 1872 and so also as regards the provision of Section 300 of IPC, 1860 - Murder - Circumstantial evidence- Each of circumstance must be proved beyond reasonable doubt by independent evidence, giving no room for any hypothesis, other than guilt of accused- None of circumstance, in instance case, held, satisfies this standard - Investigation in instant case is directed at proving pre-conclusion that accused was guilty, rather than other way round with investigation leading to conclusion that he was guilty - Judgment and order of High Court convicting accused set aside, and accused acquitted.

29. Keeping in view the evidence facilitated on the part of the prosecution, in the instant case, accused - Girish is alleged to have committed murder of his wife - Bhagyamma by pushing her from Shanthala drop along 39 with her baby girl namely Shruthi who was aged of 3 months, from Shivagange hills.

30. The golden rule of interpretation is that Court must first try to ascertain the intention of the Legislature by giving to the very words used by it their original and grammatical meaning. In the interpretation of the statutes, the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. But in the instant case it requires to refer to Section 3 of Indian Evidence Act, 1872 in respect of proved / not proved. It is the domain vested with the prosecution and equally a domain vested with the defence counsel and greater domain vested with the trial Court to appreciate the evidence facilitated by the prosecution to prove the guilt of the accused beyond all reasonable doubt to secure conviction. But no doubt has been raised by the Court on the doctrine of benefit of doubt in so far as the accused 40 alone. In the instant case offences punishable under Section 302 and so also 201 of IPC relating to the murder have been charged against the accused. But there is no definition of murder in the aforesaid Section. But the section merely takes the four more serious types of culpable homicide, basing on the mens rea and designates them murder. Motive : It is not essential for the prosecution to establish motive factor against the accused in all cases, but at some time it cannot be given to gainsaid that without adequate motive speaking normally, none is expected to take life of another human being. But the motive behind the crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assigning the evidence. But the circumstances proving the guilt of the accused are however not weakened at all by the fact that the motive has not been established. It often happens that only the culprit himself knows what moved him to certain course of action. Insofar as medical evidence it should be 41 corroborated with any other independent testimony. But medical evidence is to be proved by the prosecution that the injuries inflicted by the deceased has led to his death. In the instant case there shall be corpus delicti relating to the baby girl - Shruthi who is aged of 3 months and deceased - Bhagyamma. But the body of the child was not traced by the investigating agency during the course of investigation. There was no evidence found on the part of the prosecution alleging that accused - Girish pushed his wife and child in Shanthala drop at Shivagange hills. The term corpus delicti is invention of the middle ages and was used by them to denote the whole of the

facts which constituted the crime of killing. But when the body of killed had been found that the expression itself has many vices but in the sense in which its authors used it, it is at least intelligible. The phrase corpus delicti is well known in law. Literally it is the body was the offence, that is ingredients which go to make it up. In this instant case, PW.21 being investigating officer who conducted 42 investigation thoroughly but there is no interference made to secure the dead body of Shruthi who is aged of 3 months who was also pushed or fell along with Bhagyamma. Therefore, the theory put forth by the prosecution for the offences under Sections 302 and 201 of IPC, 1860 in respect of murder of Bhagyamma along with her kid - Shruthi cannot be thrown out merely on the ground that the dead body of the baby girl aged of 3 months as on the date of the incident is not traced when the other evidence clinchingly establish that the deceased met her death on the hands of the accused. Nothing was found in the evidence on record to show that the accused had caused death of the deceased - Bhagyamma who is his wife along with their kid namely Shurthi Therefore, doubt has arisen in the mind of the Court relating to accused having committed the murder of his wife Bhagyamma and his baby girl - Shruthi. But in the instant case, the entire case is based upon circumstantial evidence. In a case based on circumstantial evidence, motive factor bears an 43 important significance. Motive always locks-up in the mind of the accused and sometimes, it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. But the law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests:

1. the circumstance from which an inference of guilt sought to be drawn, must be cogently and firmly established;
- 2) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused.
- 3) circumstances taken cumulatively should form the chain complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. These circumstantial evidence in order

to sustain conviction must be complete and incapable of explanation of any other hypothesis than 44 that of the guilt of the accused. The circumstantial evidence should not only be consistent with guilt of the accused but should be inconsistent with his innocence. Suspicion, however grave it may be, cannot take the place of poof.

31. In the instant case, there can be no doubt that the circumstances raise a serious suspicion against the respondent / accused. The medical evidence on both sides is more or less equally balanced and that being the position, the benefit of doubt must go to the accused. Mere recovery of the dead body of the deceased Bhagyamma in the absence of any other evidence connecting him with the murder, is not enough to fasten the guilt upon the accused, although it may raise some suspicion against him. But suspicion, however strong it may be, cannot be valid substitute for proof.

32. The chain of circumstances have to be established on the basis of reliable evidence, the credibility 45 of which would not, in any manner, be impeached by cross-examination and which evidence gets support from the medical evidence that, the death occurred on account of the minor injuries inflicted upon the deceased. But in the instant case, there is no eyewitness account or even there is no specific circumstantial evidence and even there is no last seen theory established by the prosecution by facilitating worthwhile evidence. Further, there is no clinching evidence on the part of prosecution to prove that the accused had caused the said injuries that were inflicted over the person of the deceased - Bhagyamma by pushing her from Shanthala drop along with her kid namely Shruthi and accused was responsible for the death of the deceased - Bhagyamma along with her child - Shruthi.

33. At a cursory glance of the evidence of PWs.13 and 14 who are parents of the deceased and PWs.15 and 16 who are brothers of deceased who were subjected to 46 examination on the part of the prosecution and also were subjected to thorough cross-examination, the prosecution has not been able to prove the guilt of the accused beyond all reasonable doubt. Whereas, the Trial Court has appreciated the evidence on record in a proper perspective and has rightly come

to a conclusion that the accused deserved to be acquitted. Hence, there are no justifiable or acceptable reasons to interfere with the acquittal judgment rendered by the Trial Court.

34. Whereas even though the prosecution has subjected to examination PW.1 to PW.22 and got marked documents at Ex.P1 to 17, but there are no material objects said to have been got marked and even the clothes over the person of the deceased - Bhagyamma or any other materials which were found on her person were got marked by the prosecution in S.C.No.185/2011. Whereas, PWs.1 to 5, 7 and 9 who have been subjected to examination on the part of prosecution have turned 47 around to their own statements recorded by the investigating officer during the course of cross- examination. But the evidence facilitated by the prosecution is full of contradictions and improvements and there is no specific circumstance to show that the accused had committed the murder of the deceased - Bhagyamma along with her kid - Shruthi. Therefore, in this appeal it does not arise to call for any inference since there is no perversity or any absurdity in the acquittal judgment rendered by the Trial Court to call for inference. Further, there are no warranting circumstances also arising to re- visit the acquittal judgment rendered by the Trial Court. Hence, the appeal ought to be rejected as being devoid of merits by confirming the acquittal judgment rendered by the trial Court. Therefore, for the aforesaid reasons, we are of the opinion that appeal deserves to be rejected. Accordingly, we proceed to pass the following :

48.

ORDER

Appeal preferred by the appellant / State under Section 378(1) and (3) of Cr.P.C is hereby rejected. Consequently, the acquittal judgment rendered by the trial Court in S.C.No.185/2011 is hereby confirmed. If any bail bond has been executed by the accused, same shall stand cancelled. Sd/- JUDGE Sd/- JUDGE SSD/RJ

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